



House of Representatives

General Assembly

File No. 690

January Session, 2015

Substitute House Bill No. 7035

House of Representatives, April 16, 2015

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE PROTECTION OF CITIZENS FROM ABUSIVE AND OPPRESSIVE AUTOMATED POLITICAL TELEPHONE CALLS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2016*) (a) As used in this section
2 and section 2 of this act:

3 (1) "Caller" means a person, corporation, firm, partnership,
4 association or legal or commercial entity that attempts to contact, or
5 who contacts, a subscriber in this state by using a telephone or a
6 telephone line.

7 (2) "Subscriber" means a person who subscribes to telephone service
8 from a telephone company or any other person living or residing with
9 the subscribing person.

10 (3) "Political message" means any telephonic message that promotes
11 the success of a candidate's campaign for nomination at a primary or
12 election or the defeat of another candidate's campaign for nomination

13 at a primary or election or promotes the success or defeat of a
14 referendum question.

15 (b) The Department of Consumer Protection shall establish and
16 maintain a "no political calls" listing of subscribers who do not wish to
17 receive an unsolicited telephonic call conveying a political message.
18 The department may maintain such listing in the same manner and in
19 conjunction with the listing the department maintains pursuant to
20 section 42-288a of the general statutes. The department shall provide
21 notice to subscribers of the establishment of a "no political calls" listing.
22 Any subscriber who wishes to be included on such listing shall notify
23 the department by calling a toll-free number provided by the
24 department, or in any other such manner and at such times as the
25 commissioner may prescribe. A subscriber on such listing shall be
26 deleted from such listing upon the subscriber's written request. The
27 department shall update such listing not less than quarterly and shall
28 make such listing available to any caller or any other person upon
29 request.

30 (c) No caller may make or cause to be made any unsolicited
31 telephonic call conveying a political message to any subscriber if the
32 subscriber's name and telephone number or numbers appear on the
33 then current quarterly "no political calls" listing made available by the
34 department under subsection (b) of this section, unless the subscriber
35 knowingly or voluntarily requested, consented to, permitted or
36 authorized receipt of the message.

37 Sec. 2. (NEW) (*Effective January 1, 2016*) (a) The Attorney General
38 may issue subpoenas or interrogatories requiring production of
39 evidence or testimony concerning a violation of section 1 of this act.
40 The Attorney General may apply to the Superior Court to enforce any
41 subpoena or interrogatories issued pursuant to this subsection.

42 (b) The Attorney General may file a civil action in Superior Court to
43 enforce the provisions of this section and to enjoin further violations of
44 section 1 of this act. The Attorney General may recover actual damages
45 or statutory damages of twenty-five thousand dollars, whichever is

46 greater, for each violation of section 1 of this act. For purposes of this
47 section, each unsolicited telephonic call conveying a political message
48 received in violation of section 1 of this act shall constitute a separate
49 and distinct violation.

50 Sec. 3. Section 9-601 of the general statutes is amended by adding
51 subdivision (32) as follows (*Effective January 1, 2016*):

52 (NEW) (32) "Automated telephone call" means any telephone call
53 made using automated telephone solicitation technologies, including
54 any device that selects and dials telephone numbers and, working
55 alone or in conjunction with other equipment, disseminates a
56 prerecorded or synthesized voice message to the telephone number
57 called.

58 Sec. 4. Subsection (b) of section 9-621 of the general statutes is
59 repealed and the following is substituted in lieu thereof (*Effective*
60 *January 1, 2016*):

61 (b) In addition to the requirements of subsection (a) of this section:

62 (1) No candidate or candidate committee or exploratory committee
63 established by a candidate shall make or incur any expenditure for
64 television advertising or Internet video advertising, which promotes
65 the success of such candidate's campaign for nomination at a primary
66 or election or the defeat of another candidate's campaign for
67 nomination at a primary or election, unless, as a disclaimer, (A) at the
68 end of such advertising there appears simultaneously, for a period of
69 not less than four seconds, (i) a clearly identifiable photographic or
70 similar image of the candidate making such expenditure, (ii) a clearly
71 readable printed statement identifying such candidate, and indicating
72 that such candidate has approved the advertising, and (iii) a
73 simultaneous, personal audio message, in the following form: "I am
74 (candidate's name) and I approved this message", and (B) the
75 candidate's name and image appear in, and the candidate's voice is
76 contained in, the narrative of the advertising, before the end of such
77 advertising;

78 (2) No candidate or candidate committee or exploratory committee
79 established by a candidate shall make or incur any expenditure for
80 radio advertising or Internet audio advertising, which promotes the
81 success of such candidate's campaign for nomination at a primary or
82 election or the defeat of another candidate's campaign for nomination
83 at a primary or election, unless, as a disclaimer, (A) the advertising
84 ends with a personal audio statement by the candidate making such
85 expenditure (i) identifying such candidate and the office such
86 candidate is seeking, and (ii) indicating that such candidate has
87 approved the advertising in the following form: "I am (candidate's
88 name) and I approved this message", and (B) the candidate's name and
89 voice are contained in the narrative of the advertising, before the end
90 of such advertising; and

91 (3) No candidate or candidate committee or exploratory committee
92 established by a candidate shall make or incur any expenditure for
93 automated telephone calls which promote the success of such
94 candidate's campaign for nomination at a primary or election or the
95 defeat of another candidate's campaign for nomination at a primary or
96 election, unless the narrative begins in the candidate's voice stating the
97 candidate's name and [voice are contained in the narrative of the call,
98 before the end of such] that the call is an automated telephone call.

99 Sec. 5. Section 9-622 of the general statutes is repealed and the
100 following is substituted in lieu thereof (*Effective January 1, 2016*):

101 The following persons shall be guilty of illegal practices and shall be
102 punished in accordance with the provisions of section 9-623:

103 (1) Any person who, directly or indirectly, individually or by
104 another person, gives or offers or promises to any person any money,
105 gift, advantage, preferment, entertainment, aid, emolument or other
106 valuable thing for the purpose of inducing or procuring any person to
107 sign a nominating, primary or referendum petition or to vote or refrain
108 from voting for or against any person or for or against any measure at
109 any election, caucus, convention, primary or referendum;

110 (2) Any person who, directly or indirectly, receives, accepts,
111 requests or solicits from any person, committee, association,
112 organization or corporation, any money, gift, advantage, preferment,
113 aid, emolument or other valuable thing for the purpose of inducing or
114 procuring any person to sign a nominating, primary or referendum
115 petition or to vote or refrain from voting for or against any person or
116 for or against any measure at any such election, caucus, primary or
117 referendum;

118 (3) Any person who, in consideration of any money, gift, advantage,
119 preferment, aid, emolument or other valuable thing paid, received,
120 accepted or promised to the person's advantage or any other person's
121 advantage, votes or refrains from voting for or against any person or
122 for or against any measure at any such election, caucus, primary or
123 referendum;

124 (4) Any person who solicits from any candidate any money, gift,
125 contribution, emolument or other valuable thing for the purpose of
126 using the same for the support, assistance, benefit or expenses of any
127 club, company or organization, or for the purpose of defraying the cost
128 or expenses of any political campaign, primary, referendum or
129 election;

130 (5) Any person who, directly or indirectly, pays, gives, contributes
131 or promises any money or other valuable thing to defray or towards
132 defraying the cost or expenses of any campaign, primary, referendum
133 or election to any person, committee, company, club, organization or
134 association, other than to a treasurer, except that this subdivision shall
135 not apply to any expenses for postage, telegrams, telephoning,
136 stationery, express charges, traveling, meals, lodging or photocopying
137 incurred by any candidate for office or for nomination to office, so far
138 as may be permitted under the provisions of this chapter;

139 (6) Any person who, in order to secure or promote the person's own
140 nomination or election as a candidate, or that of any other person,
141 directly or indirectly, promises to appoint, or promises to secure or
142 assist in securing the appointment, nomination or election of any other

143 person to any public position, or to any position of honor, trust or
144 emolument; but any person may publicly announce the person's own
145 choice or purpose in relation to any appointment, nomination or
146 election in which the person may be called to take part, if the person is
147 nominated for or elected to such office;

148 (7) Any person who, directly or indirectly, individually or through
149 another person, makes a payment or promise of payment to a treasurer
150 in a name other than the person's own, and any treasurer who
151 knowingly receives a payment or promise of payment, or enters or
152 causes the same to be entered in the person's accounts in any other
153 name than that of the person by whom such payment or promise of
154 payment is made;

155 (8) Any person who knowingly and wilfully violates any provision
156 of this chapter;

157 (9) Any person who offers or receives a cash contribution in excess
158 of one hundred dollars to promote the success or defeat of any political
159 party, candidate or referendum question;

160 (10) Any person who solicits, makes or receives a contribution that
161 is otherwise prohibited by any provision of this chapter;

162 (11) Any department head or deputy department head of a state
163 department who solicits a contribution on behalf of, or for the benefit
164 of, any candidate for state, district or municipal office or any political
165 party;

166 (12) Any municipal employee who solicits a contribution on behalf
167 of, or for the benefit of, any candidate for state, district or municipal
168 office, any political committee or any political party, from (A) an
169 individual under the supervision of such employee, or (B) the spouse
170 or a dependent child of such individual;

171 (13) Any person who makes an expenditure, that is not an
172 independent expenditure, for a candidate without the knowledge of
173 such candidate. No candidate shall be civilly or criminally liable with

174 regard to any such expenditure;

175 (14) Any chief of staff of a legislative caucus who solicits a
176 contribution on behalf of or for the benefit of any candidate for state,
177 district or municipal office from an employee of the legislative caucus;

178 (15) Any chief of staff for a state-wide elected official who solicits a
179 contribution on behalf of or for the benefit of any candidate for state,
180 district or municipal office from a member of such official's staff; [or]

181 (16) Any chief of staff for the Governor or Lieutenant Governor who
182 solicits a contribution on behalf of or for the benefit of any candidate
183 for state, district or municipal office from a member of the staff of the
184 Governor or Lieutenant Governor, or from any commissioner or
185 deputy commissioner of any state agency; [.] or

186 (17) Any person, other than a candidate or candidate committee
187 pursuant to subsection (b) of section 9-621, as amended by this act,
188 who makes or incurs any expenditure for an automated telephone call
189 that promotes the success of a candidate's campaign for nomination at
190 a primary or election or the defeat of another candidate's campaign for
191 nomination at a primary or election or promotes the success or defeat
192 of a referendum question.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2016	New section
Sec. 2	January 1, 2016	New section
Sec. 3	January 1, 2016	9-601
Sec. 4	January 1, 2016	9-621(b)
Sec. 5	January 1, 2016	9-622

Statement of Legislative Commissioners:

In Section 1, "persons" was changed to "person" and in Sections 1 and 5, "to promote" was changed to "promotes" for consistency.

JUD Joint Favorable Subst. -LCO

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Consumer Protection, Dept.	GF - Cost	45,900	86,800
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	16,773	33,547
Resources of the General Fund	GF - Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost to the state of \$62,673 in FY 16 and \$120,347 in FY 17 as the Department of Consumer Protection (DCP) would be required to establish and maintain a "no political calls" listing of subscribers who do not wish to receive an unsolicited telephonic call conveying a political message.

The DCP would require a Consumer Information Representative to receive calls for subscribers and create and maintain a database in conjunction with existing internet technology staff. Additionally the DCP would require a part-time Special Investigator to compile and gather the underlying evidence needed to enforce the provisions of the bill.

Costs in FY 16 include Personal Services (\$43,400), one-time software (\$2,500) and Fringe Benefits (\$16,773). The costs in FY 16 reflect January 1, 2016 implementation. Costs in FY 17 include

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

Personal Services (\$86,800) and Fringe Benefits (\$33,547).

A minimal revenue gain to the General Fund is due to fines related to violations of provisions in the bill.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the number of violations.

OLR Bill Analysis**sHB 7035*****AN ACT CONCERNING THE PROTECTION OF CITIZENS FROM ABUSIVE AND OPPRESSIVE AUTOMATED POLITICAL TELEPHONE CALLS.*****SUMMARY:**

This bill requires the Department of Consumer Protection (DCP) to create a “do not call” list for people who do not want to receive unsolicited calls promoting a candidate’s campaign for nomination or election, or another candidate’s defeat, or promoting a referendum’s success or defeat. It prohibits any person or entity from making or causing to be made such a call to someone whose name and telephone number is on the list unless the person knowingly or voluntarily requests, consents to, permits, or authorizes receiving the message. The bill allows the attorney general to file a civil action in Superior Court to enforce these provisions.

The bill prohibits anyone from making an expenditure for an automated telephone call that promotes a (1) candidate’s campaign for nomination or election or another candidate’s defeat, except a candidate or candidate committee or (2) referendum question’s success or defeat. A violation is a class D felony, punishable by up to five years in prison, a fine of up to \$5,000, or both.

Automated telephone calls are those that use automated telephone solicitation technologies including a device that selects and dials phone numbers and, working alone or with other equipment, disseminates a prerecorded or synthesized voice message to the number called.

The bill also makes a change to the requirements for expenditures by candidates, candidate committees, and candidate exploratory committees for these calls. Currently, these calls must include the

candidate's name and voice in their narrative. The bill instead requires such a call's narrative to begin in the candidate's voice stating his or her name and that the call is an automated one.

EFFECTIVE DATE: January 1, 2016

“DO NOT CALL” LIST

The bill requires DCP to notify telephone service subscribers about the “do not call” list for unsolicited calls conveying a political message. Subscribers and anyone living or residing with a subscriber can request inclusion on the list by calling a toll-free number or using other DCP-prescribed methods. A person can request removal from the list in writing. DCP must update the list at least quarterly and make it available on request.

The bill requires DCP to maintain the list in the same way as and in conjunction with the “do not call” list it already maintains for unsolicited sales calls, which allows DCP to contract with a private vendor to maintain the list and adopt regulations on the list's availability and distribution.

The bill allows the attorney general to issue, and the Superior Court to enforce, subpoenas and interrogatories for evidence or testimony relating to violations of the “do not call” provisions. The attorney general can file a civil action in Superior Court to enforce the bill's provisions, enjoin violations, and recover the greater of actual damages or \$25,000 from violators. Each unsolicited phone call that violates the bill's provisions is a separate offense.

BACKGROUND

Prohibited Robo-Calls

The law prohibits transmitting unsolicited recorded business, commercial, or advertising messages to in-state customers through telephone message devices that do not immediately disconnect when the consumer hangs up. Violators are subject to a fine of up to \$1,000 (CGS § 16-256e).

First Amendment Protections

The U.S. Constitution's First Amendment protects the freedom of speech. The U.S. Supreme Court has ruled that corporations and unions have the same political speech rights as individuals under the First Amendment (*Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)). No binding court case has considered a similar regulation of automated political calls affecting non-campaign speakers.

When analyzing a statute that impacts speech, a court must consider whether its regulation is content-based or content-neutral. A content-based statute prohibits a complete area of speech or certain perspectives in an area of speech. These statutes are subject to the highest degree of scrutiny and must be necessary and narrowly tailored to achieve a compelling public interest. A content-neutral statute is one that regulates speech without reference to the content of the speech. A content-neutral statute is subject to intermediate scrutiny and is valid if it is narrowly tailored to serve a significant government interest and leaves ample alternative channels of communication.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 29 Nay 13 (03/27/2015)